

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

OVERNITE TRANSPORTATION COMPANY

Employer

and

JEROLD F. SWAIN, an Individual

Petitioner

and

WAYNE PIERCE, an Individual

Petitioner

and

HIGHWAY, CITY AND AIR FREIGHT DRIVERS, DOCKMEN, DAIRY WORKERS AND HELPERS,
ST. LOUIS AND VICINITY MISSOURI, MARINE OFFICERS ASSOCIATION, THE NAVIGABLE INLAND
WATERWAY SYSTEMS OF THE UNITED STATES LOCAL 600, a/w INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO^{1/}

Union

Cases 14-RD-1699 and 14-RD-1743

**REGIONAL DIRECTOR'S
DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.^{2/}
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:^{3/}

All full-time and regular part-time city drivers, dockmen, road drivers, and mechanics employed at the Employer's St. Louis, Missouri terminal, EXCLUDING all office clerical and professional employees, guards and supervisors^{4/} as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period

because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

HIGHWAY, CITY AND AIR FREIGHT DRIVERS, DOCKMEN, DAIRY WORKERS AND HELPERS, ST. LOUIS AND VICINITY MISSOURI, MARINE OFFICERS ASSOCIATION, THE NAVIGABLE INLAND WATERWAY SYSTEMS OF THE UNITED STATES LOCAL 600, a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

ELECTION NOTICES

In accordance with Section 102.30 of the Board's Rules and Regulations, the Employer shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. These notices are to remain posted until the end of the election. Failure to post the election notices as required will be grounds for setting aside the election whenever proper and timely objections are filed. A party is estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 working days prior to the commencement of the election that it has not received copies of the election notice. As used in this paragraph, the term "working day" means an entire 24-hour period excluding Saturdays, Sundays, and holidays.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969) Accordingly, it is hereby directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director for Region 14 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office at 1222 Spruce Street, Room 8.302, St. Louis, Missouri, on or before **October 7, 2002**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of **4** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.). If you have any questions, please contact the Regional Office.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by **October 15, 2002**.

Dated September 30, 2002

at St. Louis, Missouri

Leo D. Dollard, Acting Regional Director, Region 14

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- 1 The Union's name appears as amended at hearing.
 - 2 The Employer, Overnite Transportation Company, a Virginia corporation with terminals located throughout the United States, including a terminal located in St. Louis, Missouri, has been engaged in the distribution of freight. During the 12-month period ending August 31, 2002, the Employer, in conducting its business operations, derived gross revenues in excess of \$50,000 for the transportation of freight from the State of Missouri directly to points outside the State of Missouri.
 - 3 The parties stipulated that the Union was certified in Case 14-RC-11501 as the exclusive collective-bargaining representative of the employees in the petitioned-for unit. The parties agree that the petitioned-for unit is appropriate and that there are approximately 130 employees in the unit.

Contrary to the Employer, the Union contends that the processing of these petitions should be held in abeyance pending the final disposition of Cases 18-CA-16118 and 14-CA-27079. The charge in Case 18-CA-16118 was dismissed by Region 18 and the Union's appeal of the dismissal is pending in the Office of Appeals. Subsequent to the close of hearing, I have determined that the charge in Case 14-CA-27079 lacks merit and will be dismissed, absent withdrawal. Accordingly, I conclude that further processing of these petitions is consistent with Section 11732 of the Board's Casehandling Manual (Part Two) Representation Proceedings.

At hearing, the Union noted that the petitions contain certain inaccuracies with respect to the number of unit employees, the name of the Employer's representative, and ongoing picketing. These inaccuracies are immaterial and do not impact the further processing of the petitions. As the parties have raised no other issues, I shall direct an election in the petitioned-for unit.

- 4 The parties stipulated that the following individuals have the authority to hire, fire, and discipline employees and are supervisors within the meaning of the Act: Service Center Manager Bob Livingston, Assistant Service Center Manager Ron Huck, City Dispatcher Rick Hawkins, Dock Supervisors Mike Barnett, Bob Hoffman, Darryl Porter, and Kenyetta Williams, Office Supervisor Keith Hime, and Fleet Maintenance Supervisor Rodney Cannon. In agreement with the parties, I find that the above-named individuals are supervisors within the meaning of the Act and are excluded from the unit found appropriate here.